

BECKER & POLIAKOFF, LLP

James J. Mahon (Bar Id No. 321332020)

45 Broadway, 17th Floor

New York, New York 10006

Tel.: (212) 559-3322

Attorneys for Walter Schik

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____	:	
WALTER SCHIK,	:	Docket No.: _____
	:	
Plaintiff,	:	<u>Civil Action</u>
	:	
v.	:	COMPLAINT
	:	
UNITED STATES OF AMERICA,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	
	:	
_____	:	

Plaintiff, by his attorneys, Becker and Poliakoff LLP, for his claim against the United States of America, Respectfully, alleges:

PARTIES

1. Plaintiff Walter Schick is an individual residing at 162 W. 54th St., New York, NY 10019 – 5345
2. Defendant is the United States of America

JURISDICTION

3. This is a suit arising under the laws of the Internal Revenue Code of the United States for the refund of taxes erroneously and illegally assessed against and collected from the plaintiff.

4. Jurisdiction is conferred upon this court by virtue of title 28, section 1346 (A) (1) of the United States Code.

FACTS

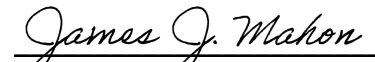
5. In or about September 25, 2017, the Internal Revenue Service assessed against the plaintiff, penalties, pursuant to Internal Revenue Code section 6038 for the years of 2000 through 2012 in the amount of \$552,300. (A copy of the notices of penalty charges for these years is annexed hereto as **exhibit A**).
6. In or about November 13, 2017, the Internal Revenue Service applied the amount of \$552,300 of an overpayment on plaintiff's 2016 return in payment of these penalties. (A copy of the letter informing plaintiff of this action is annexed hereto as **exhibit B**
7. In or about February 26, 2018, the information returns which are the subject matter of the penalties were filed under protest by the taxpayer. (A copy of these form 5471 information returns is annexed hereto as **exhibit C**).
8. The taxpayer's counsel, in a letter accompanying these returns, set forth the taxpayer's position that these information returns were not required. Moreover, if they were hypothetically required, the taxpayer's late filing was due to reasonable cause, since he correctly relied upon his attorneys and accountants to file any such information returns, if indeed they were required. (A copy of the letter dated February 26, 2018 from plaintiff's counsel to the Internal Revenue Service is annexed hereto as **exhibit D**).
9. The Internal Revenue Service did not respond to the taxpayer, and, as a result, the 2016 overpayment of \$552,300 was not applied against the plaintiff's tax liability for the year 2017, even though Plaintiff made that election on his Form 1040 for that year. (**Exhibit E**).

10. The plaintiff's return for the year 2017 was filed on October 15, 2018, and this overpayment was not applied against plaintiff's liability for that year.
11. More than 6 months have elapsed since the February 26, 2018 filings, and the Internal Revenue Service has neither responded, allowed nor disallowed plaintiff's claims.
12. As grounds for recovery, plaintiff incorporates by reference the averments contained in the February 26, 2018, letter of counsel, annexed to this pleading as **exhibit D**.
13. The assessment and collection by the Internal Revenue Service of these penalties were erroneous and illegal.
14. Plaintiff has overpaid liability for the 2017 tax year. By reason of the illegal application of his 2016 overpayment as set forth herein.
15. Plaintiff's sole owner of this claim against the defendant, and has made no assignment of said claim.

WHEREFORE, plaintiff prays for judgment against United States of America in the amount of \$552,300, together with legal fees, costs and interest as provided by law, and for such other and further relief as the court may deem appropriate.

Dated: September 25, 2020
New York, New York

BECKER & POLIAKOFF LLP
Attorneys for Plaintiff


James J. Mahon
45 Broadway
17th Floor
New York New York 10006
212 599 3322